

**RIVERDALE PLANNING BOARD**

**June 25, 2009**

The Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim  
Councilman Joseph Falkoski  
Glenn Venza  
Al Heimall  
Bradley Clinton  
George Lang  
Vincent Pellegrini (arrived 7:34 pm)  
Michael Reilly (Alt. No. 1)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: Bobby Roberts (Alt. No. 2)

Also present is John Barbarula Esquire, Board Attorney, Paul Darmofalski P.E., Board Engineer, and Ms. Donna Holmqvist, Board Planner.

**APPROVAL OF MINUTES: May 28, 2009**

Vice-Chairman Brendan Magennis stated there is one correction on page five, the Ramapo falls, should read the Ramapo fault. Thereupon Vice-Chairman Magennis set forth the motion to approve the minutes with the correction, seconded by Al Heimall.

**ROLL CALL:** Ayes: Magennis, Heimall, Budesheim, Falkoski, Venza,  
Lang, Reilly  
Nays: None  
Abstain: Clinton, Loesner  
(7 Ayes – 0 Nays – 2 Abstain – Motion Carried)

**APPROVAL OF BILLS:**

There are three bills totaling \$2,080.00 as listed on the agenda. The board secretary stated the money is available. Thereupon Al Heimall set forth the motion seconded by George Lang to approve payment of bills as listed on the agenda.

**ROLL CALL:** Ayes: Heimall, Lang, Budesheim, Falkoski, Venza,  
Clinton, Reilly, Magennis, Loesner  
Nays: None  
(9 Ayes – 0 Nays – Motion Carried)

**APPLICATION TO BE DEEMED COMPLETE OR INCOMPLETE:**

1. Application No. BOA06162009 / Mark Olynyk / 49 Harrison Road / Block 30  
Lots 42-46

Chairman Loesner stated the board received a letter from Paul Darmofalski dated June 25, 2009 recommending the application be deemed complete. The board secretary stated a copy of the letter will be e-mailed to the members.

Thereupon Al Heimall set forth the motion seconded by George Lang to deem the application complete as per Paul Darmofalski's letter of recommendation dated June 25, 2009.

**ROLL CALL:** Ayes: Heimall, Lang, Venza, Clinton, Reilly, Magennis,  
Loesner  
Nays: None  
(7 Ayes – 0 Nays – Motion Carried)

The hearing date is set for July 23, 2009

THE RECORD NOTES MEMBER VINCENT PELLEGRINI IS IN ATTENDANCE AT 7:34 P.M.

**HEARING FOR NYS&W RAILROAD:**

Chairman Loesner stated this is a continuation of the last two months hearings. Chairman Steven Loesner and member Bradley Clinton took an oath that they have read the minutes and all paperwork from the May 28<sup>th</sup> hearing. Mr. Fiorilla had no questions for Mr. Clinton or Chairman Loesner and had no objections to the gentlemen sitting and deliberating on the hearing.

Chairman Loesner asked Mr. Barbarula what the status of this hearing is at this point. Mr. Barbarula stated the board had requested the applicant to outline their position and the board received the railroad's response on June 16<sup>th</sup> to the board's inquiry. A copy of this response was submitted to each board member prior to this meeting. Mr. Barbarula stated the response will be an addendum to the application, and also the applicant has indicated that they have completed their presentation and if the board has any questions on the application or the response received, this is the time to ask the questions. Mr. Fiorilla stated that a letter was submitted to the board this evening and he would like the letter to be a part of the application as well. Mr. Barbarula stated additionally the board had requested a letter from the North Jersey Water Commission verifying their position of the stacks of brick and the weight of the brick. This letter will be added to the application as well. It is now up to the board to proceed on whether or not they are satisfied or with any questions on this matter.

Vice-Chairman Magennis stated there was one question on the depth of the pipe and if there was a response to that question. Paul Darmofalski stated that the paperwork has indicated that the depth of the pipe is eight feet. Vice-Chairman Magennis asked if the calculations were on the five foot depth. Mr. Darmofalski stated that everyone is satisfied that the calculations were done with the factor of safety.

Chairman Loesner asked how we feel about the submission on the determination of the site plan, and the motor carrier as opposed to freight forwarder. Ms. Holmqvist stated the applicant's position according to their submission is that they fall into the preemption and that they are no longer under local authority and Ms. Holmqvist stated she is not convinced of that. Ms. Holmqvist stated at the last meeting she felt the board should ask the opinion of the appropriate body whether this supposedly integral rail service is part of this jurisdiction.

Chairman Steven Loesner stated he agreed with Ms. Holmqvist for a couple of reasons. The testimony from the applicant which was that once the freight arrives and is unloaded from the cars, it wasn't going to one operator; it was going to different job sites. It is a lot different to me than the corn syrup, where it was unloaded directly from the rail cars to its transport and left the site. The testimony stated Mr. Loesner was that the bricks could stay there for months while the jobs progress. Ms. Holmqvist stated according to the agreement the railroad is open to other customers and she did not know what that would be, whether it would mean other customers or materials utilizing this site, and the traffic could be a problem. Ms. Holmqvist stated that there are other cases that she has looked at where a trucking operation is not integral with the rail service and each case rests on that particular use. Ms. Holmqvist stated she feels this is a very specialized area. Chairman Loesner stated this has been the board's position throughout the hearings, we understand the rights of the railroad to deliver the product by railcar; once it is sitting in the yard, we believe we have jurisdiction as to what goes on at the site. Ms. Holmqvist stated during her site visit, it was apparent to her that this would have a negative impact on the properties that back up to the railroad. There are standard site plan details that are not shown on the site plan stated Ms. Holmqvist, therefore the board does not have enough information to make an educated decision and Ms. Holmqvist stated she did not feel that providing the details on the site plan that are missing would

cause any undue burden to the applicant. Chairman Loesner stated he agrees with Ms. Holmqvist and he feels that we would be doing the residents a vast injustice if we didn't make sure we had got that. We have no idea what goes on there and I do understand the railroads argument stated Chairman Loesner. Chairman Loesner stated he feels once the product is offloaded and sitting on the platform, I think it belongs to us. The thing that frustrates me on it, stated Chairman Loesner, is in my opinion it is unnecessary. These lines extend into the industrial zone, as we talked about two months ago, I can't understand why a proper offloading and transfer facility can't be constructed a quarter of a mile down the line in the industrial zone with direct access to a truck route on Route 23. Chairman Loesner stated he does not understand why we can't get a modern facility, obviously the railroad intends on using this spur for offloading products, and I think every time that they change their mind on what use is going in there, we are going to be sitting here going through the same thing over and over again, inconveniencing the residents and the people in the town. Chairman Loesner stated he does not feel he can make a determination tonight. Mayor Budesheim stated he shares the chairman's sentiments and he appreciates all the research he has done. The Mayor stated he would like to make a recommendation that we appeal to the Transportation Board to get a ruling, and once we do that we are insulated from any lawsuits or challenging our decision and get a determination and he would also like to recommend that the applicant if time is of the essence then they amend their application and put it in the industrial zone where this type of activity belongs and they can prepare a full site plan and our planner would determine if that is a permitted use. The Mayor stated this would be a far more appropriate place for this type of activity than the redevelopment slash residential zone that they are using. Chairman Loesner stated he agrees and he understands the railroads position, and he knows we have nothing to stand on with the product coming in on rail, but why they wouldn't want to construct a modern, safe, efficient, clean transfer facility in the industrial zone, just staggers me stated Chairman Loesner. Once the brick operation moves out and something else comes in, the railroad is back before us. Councilman Falkoski asked if the Mayor was making his comment in the form of a motion. The Mayor stated yes and he would also like to include the planner's letter where she outlines her position in much detail as a point of information. Councilman Falkoski seconded the motion.

**ROLL CALL:** Ayes: Budesheim, Falkoski, Venza, Clinton,  
Lang, Loesner  
Nays: Heimall, Magennis  
Abstain: Pellegrini  
(7 Ayes – 2 Nays – Motion Carried)

**The Mayor stated we will file this motion with the STB within the next few days to protect our rights.**

John Barbarula stated he suggests the board make a motion to retain a firm to do that. The Mayor stated he thinks this goes beyond the Planning Board. Mr. Barbarula stated the board should pick someone who has experience in this area, especially in light of my opinion to the board; it would be more than appropriate to ask someone else do the application. Mr. Barbarula stated due to the fact that he could be called as a witness, he feels the board should choose an independent person to pursue the application. The Mayor stated he would check with our borough attorney, because he believes this is more a municipal action than a planning board. The Mayor stated he would check to see if Mr. Oostdyk has the ability to go before the STB or else we will have to hire a person.

John Barbarula stated the board should authorize the hiring of an independent attorney tonight. Mr. Barbarula stated he suggests the board form a committee, two or three people to accept resumes and also to confer with the borough attorney, because if he can do it there is no prohibition against his firm to do that. Mr. Barbarula stated he suggests the board make a motion to authorize the hiring of an attorney to file if at all possible a petition to the Surface Transportation Board.

Mayor Budesheim stated he would follow the board attorney's suggestion and first see if our borough attorney's firm can handle it and if not then we have used Richard Clemack in the past, so rather than go through an interview process, I'd like to get this going as soon as possible.

Vice-Chairman Magennis asked if that means that Mr. Clemack is going to make the application to the STB? The Mayor stated Mr. Oostdyk will decide whether he can or cannot. The Mayor stated if he can't then Mr. Clemack has helped us in the past and he would be asked second. Mr. Venza asked and if it is beyond Mr. Clemack's scope? Chairman Loesner stated we will form a committee and find one. Mr. Barbarula stated the board should take one motion at a time. The Mayor has set forth a motion to obtain independent counsel as per Mr. Barbarula recommendation. Mr. Lang seconded the motion.

**ROLL CALL:** Ayes: Budesheim, Lang, Falkoski, Venza, Pellegrini,  
Clinton, Magennis, Loesner  
Nays: Heimall  
(8 Ayes – 1 Nays – Motion Carried)

The second motion will be to appoint a committee to look at potential attorneys, first being the town attorney, second to be the conflict attorney, we have had Mr. Clemack cover for me before and he is very familiar with the town, so he would be number two and then after consulting with them go to a third if necessary. With that motion the Chairman should choose at least two people to take care of the communications with the town attorney, Mr. Clemack and any other attorney that you may need to interview.

Vice-Chairman Magennis asked who would be approving that these attorneys are qualified to do this work. John Barbarula stated that the committee would have the approval and authorized to hire an independent attorney.

Chairman Steven Loesner set forth the motion to enable the committee to choose an attorney, and that the committee would be Vice-Chairman Magennis and himself. Vice-Chairman Magennis stated he would not want to be on that committee because he felt he would be biased. Chairman Loesner stated he would go to the next senior member Al Heimall. Mr. Heimall stated he would be on the committee. The motion was seconded by George Lang.

**ROLL CALL:** Ayes: Loesner, Lang, Budesheim, Falkoski, Venza,  
Heimall, Pellegrini, Clinton, Magennis  
Nays: None  
(9 Ayes – 0 Nays – Motion Carried)

The Board Secretary stated the committee will be Chairman Steven Loesner and Al Heimall.

**MOTION TO CANCEL JULY 2, 2009 MEETING :**

Thereupon Chairman Steven Loesner set forth the motion seconded by Al Heimall to cancel the July 2, 2009 meeting due to lack of agenda.

**ROLL CALL:** Ayes: Loesner, Heimall, Budesheim, Falkoski, Venza,  
Pellegrini, Clinton, Lang, Magennis  
Nays: None  
(9 Ayes - 0 Nays – Motion Carried)

The next meeting will be July 23, 2009.

**OTHER BUSINESS:**

The Mayor stated that if any residents want to submit any information in reference to the railroad, he would like to get their input. The Mayor asked the fire department if they have anything to please submit it to either him or the Chairman of the Planning Board.

**ADJOURNMENT:**

Thereupon Bradley Clinton set forth the motion, seconded by Al Heimall to adjourn the meeting.

Meeting adjourned at 7:55 p.m.

Respectfully submitted by:

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Linda Roetman  
Board Secretary

## **RIVERDALE PLANNING BOARD**

July 23, 2009

The Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim  
Glenn Venza  
Bradley Clinton  
Al Heimall  
Vincent Pellegrini  
Michael Reilly (Alt. No. 1)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: Councilman Joseph Falkoski  
George Lang  
Bobby Roberts (Alt. 2)

Also present is John Barbarula Esquire, Board Attorney, Paul Darmofalski P.E., Board Engineer.

### **APPROVAL OF MINUTES:**

June 25, 2009

Thereupon Vice-Chairman Brendan Magennis set forth the motion to approve the minutes as written and submitted, seconded by Al Heimall.

**ROLL CALL:** Ayes: Magennis, Heimall, Budesheim, Venza, Pellegrini,  
Clinton, Reilly, Loesner  
Nays: None  
(8 Ayes – 0 Nays – Motion Carried)

### **RESOLUTION FOR NYS&W RAILWAY CORPORATION:**

#### **1. NYS&W Railway Corporation / Paterson Hamburg Turnpike and Post Lane / Block 17 Lot 4**

John Barbarula read a copy of the Resolution; a copy of the Resolution was provided to each board member prior to the meeting.

Mayor Budesheim stated that the Resolution does not reflect what his motion was. Mayor Budesheim stated he did not deny the application, however he did not approve it; his motion was that he would like a ruling from the STB and he would like to carry the application until a ruling is made by the STB. Michael Reilly stated that is how he interpreted the motion made by the Mayor.

Mayor Budesheim stated his intention at that time was to carry the application pending the determination from the STB. Glenn Venza stated he did not vote to deny and his thoughts were that the application was to be carried until the STB ruling. After discussion, it was suggested by the board attorney that the application be dismissed without prejudice based on the fact that we have insufficient conflicting information on whether we have jurisdiction over the application. Until the jurisdiction can be acted upon by the Surface Transportation Board, which we are going to be appearing before, is denied, stated Chairman Loesner. John Barbarula stated he took the Mayor's comments as if you want to move the operation down it's fine, but where it is, is no good and therefore the vote was I am not approving it where it is and I am adopting Donna's report. But in order for it to be clean and get an automotive approval, he recommends that it be placed on the agenda, because the motion the Mayor stated was that in his mind,

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conflicting issues about the jurisdiction, therefore he could not act now, it would have to be delayed until the STB ruling, but we can't do that, so we will dismiss without prejudice.

After a lengthy discussion, the board felt the resolution should be carried to the August 6, 2009 meeting to give the attorney more time to submit the reworded resolution.

Thereupon Chairman Steven Loesner set forth the motion seconded by Glenn Venza to carry this resolution to the August 6, 2009 meeting.

**ROLL CALL:** Ayes: Loesner, Venza, Budesheim, Clinton,  
Reilly, Pellegrini  
Nays: None  
Abstain: Heimall, Magennis  
(5 Ayes – 0 Nays – 2 Abstain - Motion Carried)

#### **APPROVAL OF BILLS:**

Chairman Loesner stated there are four bills totaling \$1,102.50 as listed on the agenda. The money is available; thereupon Al Heimall set forth the motion seconded by Glenn Venza to approve the payment of bills as listed on the agenda in the amount of \$1,102.50.

**ROLL CALL:** Ayes: Venza, Heimall, Budesheim, Pellegrini, Clinton,  
Reilly, Magennis, Loesner  
Nays: None  
(8 Ayes – 0 Nays – Motion Carried)

#### **BOARD OF ADJUSTMENT APPLICATION:**

##### **1. Application No. BOA06162009 / Mark Olynyk / 49 Harrison Road / Block 30 Lots 42-46**

The Mayor stepped down from the dais due to this being a Board of Adjustment Application.

Attorney Barbarula stated the notices are in order and the board has jurisdiction to hear the application. Mr. Mark Olynyk came forward and was sworn in.

Mr. Olynyk stated he would like to build an addition over the garage, and also extend the garage. Mr. Olynyk is applying for two variances, front yard setback and right side setback. Mr. Darmofalski stated this is a residential home in the Industrial Zone. Residents have not been allowed in the zone, and these houses have been there since prior to the zoning being in place, but it is one of those situations that have been prohibited. He is allowed to continue his residence because he has been there. He has two bulk variances that are required. Many of the setbacks don't match as per the architect's zoning table, because of the industrial setbacks. The lots in the industrial zone are significantly larger than the residential lots. The property is in the flood zone and there is actually no building envelope for this particular lot when you apply the front yard and the rear yard of seventy-five feet each, you have a line in the middle of the property where you are allowed to build stated Mr. Darmofalski. With all of that in mind, the applicant is applying for a garage addition for the right hand side and it will decrease the side yard to a little less than thirteen feet. Mr. Darmofalski stated there is an 800 sq. ft. addition to impervious coverage. The front yard is pre-existing non-conforming as well. This application was started last year and I told Mr. Olynyk that he had to obtain a DEP waiver stated Mr. Darmofalski. Mr. Olynyk has received DEP approval and a copy was submitted to the board members prior to the meeting. This is an expansion of a non-conforming use.

Mr. Heimall asked about the jurisdiction of this property and he was under the impression that the front of this home is in Pompton Plains and do we have the jurisdiction to hear

this application. Paul Darmofalski stated the road to this property is through Pequannock Township and the mailing address is actually Pompton Plains; however, the property is entirely in the Borough of Riverdale. John Barbarula stated if the property were in two towns the applicant would have to appear at both towns; however this is a Riverdale property only.

Chairman Loesner asked about the house next door to this property and if the applicant knew the setback to the adjoining property. Mr. Olynyk stated he would say it is approximately thirty feet to the property line setback.

The Board of Health approved this application due to a new septic system installed with the bedrooms added.

Chairman Loesner asked if there were any questions from the board. Chairman Loesner opened the application to the public, no one from the public came forward; thereupon Al Heimall set forth the motion seconded by Vincent Pellegrini to close the public portion of the application.

**ALL IN FAVOR**

Attorney Barbarula stated that if a motion to approve this application is made, it should be that the pre-existing non-conforming use be allowed to be expanded, and that the bulk variances (front yard and side yard) are approved and that the board acknowledges all the pre-existing variances as listed on the application and plans.

Thereupon Vice-Chairman Brendan Magennis set forth the motion that this application be approved as per the attorney's statements above, the expansion of the non-conforming use, the bulk variances and the pre-existing variances as listed on the application and plans. Al Heimall seconded the motion.

**ROLL CALL:** Ayes: Magennis, Heimall, Venza, Pellegrini, Clinton,  
Reilly, Loesner  
Nays: None  
(7 Ayes – 0 Nays – Motion Carried)

**OTHER BUSINESS:**

1. Chairman Loesner stated that everyone received an e-mail in reference to the Pio Costa filing. Chairman Loesner set forth the motion to approve that John Barbarula answer the lawsuit that was submitted by Pio Costa, seconded by Vincent Pellegrini.

**ROLL CALL:** Ayes: Loesner, Pellegrini, Venza, Clinton, Reilly,  
Nays: None  
Abstain: Heimall, Magennis  
(5 Ayes – 0 Nays – 2 Abstain – Motion Carried)

2. Chairman Loesner stated that a letter was just given to everyone in reference to RER from Paul Darmofalski, in reference to their new site. Mr. Darmofalski stated RER is using the property for storage and trucking. Mr. Darmofalski's opinion is that they need to control the housekeeping and control of the dust problem. Mr. Darmofalski stated he feels as the engineer advising the board that when you approve something like this and there are immediate complaints from some of the neighbors that the Borough needs to do something about it. My recommendation is that really they need to control spillage and cleaning up after themselves and controlling dust, plus the occasional odors. Mr. Darmofalski stated the zoning officer should take the engineer's letter and say you need to respond to this in fourteen days. Chairman Loesner asked if they had an obligation to fulfill their site plan. Mr. Barbarula stated if he doesn't complete the site plan, and he is using the property, he can get a summons every day until he complies with the site plan. The Zoning Officer is in charge of the site plan. The Zoning Officer has the tools to work with this site and will start with the site plan requirements with a two week window.



3. Vice-Chairman Magennis asked how the board's committee for the NYS&W application to the STB. Chairman Loesner stated the Borough Attorney Bob Oostdyk had no conflicts and he will be representing the board. Vice-Chairman Magennis asked Mr. Barbarula how long it would take to get a ruling from the STB. Mr. Barbarula stated it would be six months before we know if they will hear the case and it would be quite a bit longer for the result. Mr. Barbarula stated the last time the board asked the STB for a ruling it took nineteen months for an answer.

4. Al Heimall asked about the installation on Newark Pompton Turnpike and Riverdale Road. Paul Darmofalski stated that the work will be done within a few days. The infrastructure is being installed if after the apartment construction is complete and a light is needed, everything will be in place. No light is being installed at this time.

**ADJOURNMENT:**

Thereupon Al Heimall set forth the motion seconded by Bradley Clinton to adjourn the meeting.

**ALL IN FAVOR**

Meeting adjourned at 8:45 p.m.  
Respectfully submitted by:

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Linda Roetman  
Board Secretary

## **RIVERDALE PLANNING BOARD**

August 6, 2009

The Workshop/Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim  
Councilman Joseph Falkoski  
Glenn Venza  
Bradley Clinton  
Al Heimall  
Vincent Pellegrini  
Michael Reilly (Alt. No. 1)  
Bobby Roberts (Alt. No. 2)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: George Lang

Also present is John Barbarula Esquire, Board Attorney.

### **APPROVAL OF MINUTES:**

July 23, 2009

Thereupon Vice-Chairman Brendan Magennis set forth the motion to approve the minutes as written and submitted, seconded by Al Heimall.

**ROLL CALL:** Ayes: Magennis, Heimall, Budesheim, Venza, Pellegrini,  
Clinton, Reilly, Loesner  
Nays: None  
Abstain: Falkoski, Roberts  
(8 Ayes – 0 Nays – 2 Abstain - Motion Carried)

### **RESOLUTIONS:**

#### **2. Application No. BOA06162009 / Mark Olynyk / 49 Harrison Road / Block 30 Lots 42-46**

A copy of the Resolution was submitted to the board members prior to the meeting. Thereupon Vice-Chairman Brendan Magennis set forth the motion seconded by Al Heimall to approve the Resolution as written and submitted.

**ROLL CALL:** Ayes: Magennis, Heimall, Venza, Pellegrini, Reilly,  
Clinton, Loesner  
Nays: None  
(7 Ayes – 0 Nays – Motion Carried)

#### **1. NYS&W Railway Corporation / Paterson Hamburg Turnpike and Post Lane / Block 17 Lot 4**

A copy of the Resolution was submitted to the board members prior to the meeting. Chairman Loesner stated this resolution spells out that we are looking for a ruling from the Surface Transportation Board as to whether we have jurisdiction or not. John Barbarula stated the final resolution has the report attached as well as the minutes from each meeting. Michael Reilly asked about the second whereas, where it says the application has not met the requirements of the consent order, didn't we discuss the consent order and didn't we move on the Mayor's motion strictly and only on the decision from the Transportation Board. Chairman Loesner stated that the original consent order spelled out if the railroad was to change what they were shipping (other

than corn syrup), they would have to come before the board. We were to get plans, site plan, etc., and the site plan wasn't sealed or to scale, it was unclear. There were no drainage details or other details and Paul Darmofalski and Donna Holmqvist brought those points up, and that is where the disagreement started. Donna felt that we had jurisdiction, and John felt another way as did some of the board members. Chairman Loesner stated the resolution was to say we have a consent order and the requirements are not met on the order and we would like a simple determination from the Surface Transportation Board whether we have jurisdiction, and if they come back and say we do not, then; we are done for now and for the future. The resolution spells that out stated Chairman Loesner. Chairman Loesner stated the resolution is not an approval or denial; it is simply dismissed without prejudice until a ruling from the STB is made.

Thereupon Chairman Loesner set forth the motion that we approve the resolution as written and submitted with the attachments as listed, seconded by Glenn Venza.

**ROLL CALL:** Ayes: Loesner, Venza, Budesheim, Falkoski, Clinton,  
Reilly, Pellegrini  
Nays: None  
(7 Ayes -- 0 Nays -- Motion Carried)

**WORKSHOP:**

Chairman Loesner asked if anyone was here for the workshop portion of the meeting. No one came forward; thereupon Chairman Loesner set forth the motion seconded by Al Heimall to close the workshop portion of the meeting.

**ALL IN FAVOR / Motion Carried**

**EXECUTIVE SESSION:**

Thereupon Chairman Loesner set forth the motion that the Planning Board go into Executive Session at 7:40 p.m. Motion is seconded by Vice-Chairman Brendan Magennis.

**ROLL CALL:** Ayes: Loesner, Magennis, Budesheim, Falkoski,  
Venza, Heimall, Pellegrini, Clinton, Reilly, Roberts  
Nays: None  
(10 Ayes -- 0 Nays -- Motion Carried)

**EXECUTIVE SESSION CLOSES AT 8:13 P.M.**

**REGULAR SESSION:**

Chairman Steven Loesner stated we are seeking a motion to hire Mr. Clemack to deliver our response to Judge Bozonelis, including; our now memorialized resolution on this matter, the minutes and Donna Holmqvist's paperwork. We will have to relay to Mr. Clemack our feelings on this matter and that we are applying to the STB for jurisdictional determination. We did dismiss the application without prejudice, and we have varying opinions from our hired professionals. Mayor Budesheim asked if Mr. Oostdyk is already working on the STB matter, why we are hiring Mr. Clemack. Chairman Loesner stated because he felt this was a Planning Board issue. The Mayor stated he felt that Mr. Oostdyk would be the one to handle both cases.

Thereupon the motion is set forth by Chairman Steven Loesner to authorize the retention of Bob Oostdyk or his firm to represent the Borough on both matters, and if Mr. Oostdyk cannot represent the Borough on the second issue, Mr. Clemack would be hired to represent the Borough. The motion is seconded by Councilman Joseph Falkoski.

**ROLL CALL:** Ayes: Loesner, Falkoski, Budesheim, Venza, Heimall,  
Pellegrini, Clinton, Reilly, Magennis  
Nays: None  
(9 Ayes -- 0 Nays -- Motion Carried)

**ADJOURNMENT:**

Thereupon Chairman Steven Loesner set forth the motion seconded by Glenn Venza to adjourn the meeting.

**ALL IN FAVOR**

Meeting adjourned at 8:29 p.m.

Respectfully submitted by:

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Linda Roetman  
Planning Board Secretary

## RIVERDALE PLANNING BOARD

August 27, 2009

The Regular meeting of the Riverdale Planning Board opened on the above date at 7:45 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim  
Councilman Joseph Falkoski  
Glenn Venza  
Al Heimall  
Vincent Pellegrini  
Michael Reilly (Alt. No. 1)  
Bobby Roberts (Alt. No. 2)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: Bradley Clinton  
George Lang

Also present is John Barbarula Esquire, Board Attorney and Donna Holmqvist, Board Planner.

**Chairman Steven Loesner stated this is a Special Public Meeting for Riverdale Master Plan Highlands Element Draft.**

Ms. Donna Holmqvist stated the document you have is a draft document and you are not adopting this document. Ms. Holmqvist stated the requirements for the grant that was given to Riverdale for the Highlands work that we are doing, required that we have a public meeting and that it had to be advertised and there has to be a discussion. The discussion should be a brief review of what the process is that we are undergoing with the highlands so that the land use board would be up to date on the procedures. The board is not taking any formal action on this, it is an advisory document, and it is not going to part of your Master Plan after tonight. There are about seventy-four communities that are participating with the highlands right now in terms of the basic studies and Burgis is doing seven of those stated Ms. Holmqvist. The highlands made available substantial grants to the community to do the planning work. There are six modules and we have completed about the first three stated Ms. Holmqvist. The first two had to do with existing land use conditions and we worked with your water and sewer consultant on providing GIS based information on the availability of water and sewer capacity and locations of septic areas in the community. That work has been completed and submitted to the highlands and they have now produced a build-out analysis for all or most of the towns in the highland region. That build-out analysis is going to be used to generate the calculations of the COAH requirements for the highlands region. Ms. Holmqvist stated what we are finding is that COAH numbers for the highland area are much lower than the original numbers that were given by COAH for the third round. This document you have in front of you stated Ms. Holmqvist is for one of the later modules. The modules that have not been completed are the land use regulations, and so forth.

Ms. Holmqvist stated the most interesting part are the maps in the back of the document. That is where you can see the highlands is designating for the various areas of the community. The regulations for land development in the highlands region are fairly restrictive even in the planning area. The communities that are now in the preservation area will have to do their conformance by December. For communities like Riverdale that are in the planning area it is optional. What we are finding now with the communities that are in the planning area, they are wrestling with the idea of do we want to go the conformance route, what are the implications to our community, if we do decide to conform. Even though the towns have been given to June, the negative thing is that we still don't know how the RCA's that will be allowed in the highlands regions will work and how it will affect the communities in the planning area stated Ms. Holmqvist. I don't know how those affordable housing allocations will be shifted around.

Ms. Holmqvist stated for the towns in the planning area that she is working on, one of the concerns is if we had a site zoned already for affordable housing that was part of the prior round certified plans. What is turning up in the highlands maps is that maybe they won't consider that being an affordable housing site anymore because of the environmental constraints and we are submitting inquiries to the planners of the highlands council about specific sites and whether that is in fact the case, because we would need to advise the communities of another "wrinkle" in the affordable housing planning process.

Chairman Loesner stated the recent appellate court decision is not helping the issue. Mr. Barbarula explained the recent court decision in Hampton New Jersey where the court deemed affordable housing as an inherently beneficial use. There was a brief discussion in reference to that court decision. Riverdale would still have to submit a housing plan.

Chairman Loesner opened the hearing to the public for comments. No one from the public came forward; thereupon Vincent Pellegrini set forth the motion seconded by Glenn Venza to close the public portion of the meeting.

**ALL IN FAVOR / Motion Carried**

**APPROVAL OF MINUTES:**

Thereupon Vice-Chairman Brendan Magennis set forth the motion seconded by Al Heimall to approve the minutes as written and submitted for August 6, 2009.

**ROLL CALL:** Ayes: Magennis, Heimall, Budesheim, Falkoski, Venza,  
Pellegrini, Reilly, Roberts, Loesner  
Nays: None  
(9 Ayes – 0 Nays – Motion Carried)

**APPROVAL OF BILLS:**

Thereupon Al Heimall set forth the motion seconded by Glenn Venza to approve payment of four bills as listed on the agenda.

**ROLL CALL:** Ayes: Heimall, Venza, Budesheim, Falkoski, Pellegrini,  
Reilly, Roberts, Magennis, Loesner

**OTHER BUSINESS:**

1. Letter from RER – Mr. Flockhart stated that the building permits will be obtained within the first weeks of September and the site plan will be completed before the next season begins.

2. Thereupon Chairman Steven Loesner set forth the motion to cancel the meeting for September 6, 2009 for lack of agenda, seconded by Vincent Pellegrini.

**ROLL CALL:** Ayes: Loesner, Pellegrini, Budesheim, Falkoski, Venza,  
Heimall, Reilly, Roberts, Magennis  
Nays: None  
(9 Ayes – 0 Nays – Motion Carried)

**ADJOURNMENT:**

Thereupon Chairman Steven Loesner set forth the motion seconded by Vice-Chairman Brendan Magennis to adjourn the meeting.

Meeting adjourned at 8:10 p.m.

Respectfully submitted by:

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Linda Roetman, Board Secretary

## **RIVERDALE PLANNING BOARD**

November 5, 2009

The Workshop/Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim  
Glenn Venza  
Al Heimall  
Vincent Pellegrini  
Bobby Roberts (Alt. No. 2)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: Councilman Joseph Falkoski  
Bradley Clinton  
George Lang  
Michael Reilly (Alt. No. 1)

Also present is John Barbarula Esquire, Board Attorney, Donna Holmqvist, Board Planner and Paul Darmofalski PE, Board Engineer.

### **APPROVAL OF MINUTES:**

Thereupon Vice-Chairman Brendan Magennis set forth the motion seconded by Al Heimall to approve the minutes of the October 22, 2009 meeting as written and submitted.

**ROLL CALL:** Ayes: Magennis, Heimall, Budesheim, Venza, Pellegrini,  
Roberts, Loesner  
Nays: None  
(7 Ayes – 0 Nays – Motion Carried)

### **WORKSHOP:**

Chairman Loesner asked if anyone was in the audience for the Workshop. No one came forward; thereupon Al Heimall set forth the motion seconded by Glenn Venza to close the workshop portion of the meeting.

**ALL IN FAVOR**

### **CONTINUATION OF HEARING FOR NYS&W RAILWAY:**

Mr. John Fiorilla, the attorney for the NYS&W RR came forward and his witnesses Mr. Nathan Fenno, President of the railroad and David A. Meyers the engineer who drew the plans submitted to the board. Mr. Fiorilla stated there are two plans submitted that are in compliance with the conditions listed on Mr. Darmofalski's letter and Ms. Holmqvist's letter, both dated November 2, 2009. The stand alone sheet No. 2 B of 9 is the only sheet that has been revised. Mr. Barbarula swore in Mr. Meyers and Mr. Fenno.

The stand alone sheet 2 B of 9 is marked Exhibit A - 11/5/2009. Mr. Meyers stated the sheet deals with a proposed traffic pattern for the facility and shows in schematic form the proposed hypothetical turning of the truck vehicles as they enter and exit the facility. The trucks enter off the Hamburg Turnpike, drive by the existing building and turn in to the paved area and at that point will stop, back up and be loaded where the signage states loading and parking. That is also proposed potential overnight parking. The forklift parking location is in the south end immediately adjacent to the unloading platform. The dumpster for the facility will also be tucked in the facility on the south end of the unloading facility. The entrance into the site on the existing pavement has a forty-five foot turning radius. Basically all of the traffic would be coming from the west off 287.

The only other addition or revision is the slight modification of the employee parking spaces. There are four on the north side of the building including one handicap spot, and we have moved two additional 10' x 20' employee parking spaces to the south side of the building that will right angle into the building. All of these are on existing asphalt pavement. We have addressed the comments referenced on Paul's letter.

The trucks are fifty-five footer tractor trailer trucks. They are regular tractor-trailer trucks. Mr. Meyers stated with this revised sheet, we have identified a location between the tracks for a proposed secondary temporary storage consisting of more than 4,700 feet of brick stack space. This is just behind the truck loading locations.

Mr. Venza asked if the forklifts will be in an enclosure or out in the elements. Mr. Meyers stated the forklifts will be kept outside. Mr. Meyers stated his forecast is for two forklifts and they will be diesel fuel. Chairman Loesner asked about the height of the light fixtures. Mr. Meyers stated they are proposing no changes to the lighting. The lights are in place and existing at 20' high for the former use.

Mr. Darmofalski stated there are a few areas of damaged pavement that have to be repaired, the second one is the stacks of brick are limited to 9' in height and there should be posting on the signage on the fence stating the height requirements for the forklift drivers so they clearly understand. The Mayor asked how many pallets 9' high would be. Mr. Darmofalski stated he thinks it would be three. The Mayor stated that the Planner has provided photos of the storage of the bricks at Roxbury and when you have three pallets or more it becomes unstable. The Mayor stated three pallets high can be unstable and for that reason he felt the maximum height should be two pallets high. The photos were not shown to the applicant. Ms. Holmqvist provided a copy of the photos to Mr. Fiorilla. The photos were marked Exhibit B 11/05/2009. Mr. Darmofalski stated he had two more points on his comments. Mr. Darmofalski stated there are portions of the fence that should be repaired and he is recommending the wooden fence also be extended to Post Lane. There was a barrier required ten years ago. Mr. Darmofalski stated he believed that Mr. Fenno had agreed to the fence at the last hearing and any landscaping that has died should be replaced.

Mr. Fenno stated that the photos shown are not pictures of their site. The site in Roxbury is of the brick storage and the M&E railroad, not NYSW. Mr. Fenno stated that it seems to be a brick storage site, but not theirs. The Mayor stated that Morris County told him that the bricks from that site are to be moved to Riverdale, and also Mr. Formica from Tri-State Brick stated at that time that these bricks were to be moved to the Riverdale site. The Mayor stated that was made quite clear during the testimony at the last hearing, so that is why we went to see what type of operation is there. The Mayor stated it doesn't matter what the railroad is, bricks are bricks and he would like to know what type of experience the railroad has with the brick company and storing these bricks.

Mr. Meyers stated that the photos appear to be stacked on an unstable base. Chairman Loesner asked if there will be a safety supervisor on site and if the town would know who the person is and who to contact. Mr. Fenno stated that the town would be notified of the person in charge of the safety operation. Mr. Fenno stated the bricks in the photos seem to be 9' high and haven't been moved in a year or more. Chairman Loesner stated unlike the Roxbury site, this site will be seen by the residents and everyone in the town that goes by the site. If we see stacks that are over 9' high that appear to be unstable, we are going to want to have someone we can contact immediately for a solution. Mr. Fenno stated that they have 24/7 coverage by dispatcher for any emergencies. Mr. Darmofalski stated that the fall zone for the bricks to the fence is approximately 17' from the stacked area to the fence. This would be outside the 9' fall. Mr. Fenno stated there is an existing asphalt curb on the site. Ms. Holmqvist stated that in order not to have a haphazard looking site, the board should consider having the RR mark out the yard where the stacks should be, to hinder a sloppy look. John Barbarula asked Ms. Holmqvist to please rise and be sworn in. After being sworn in, Ms. Holmqvist stated she that she saw the facility and had taken the photos. Ms. Holmqvist stated yes she had, and therefore; Mr. Barbarula asked that the photos be placed as Exhibit B11/05/09, and that would be a board exhibit. Mr.



Fiorilla stated there was an error that notes that the title of the photos because they are not the property of NYSW railroad.

For the record stated Chairman Loesner these are photos of the brick storage area in Roxbury, NJ and the M&E railroad that are four pages in length. Mr. Fenno stated from the photos it appears that these would be the same bricks that would be on the Riverdale site.

The Mayor stated that he was confused by the fact that for months the Tri-State Brick company had representatives at the hearings for questions in reference to the brick and now they are not present and he would like to know why. The Mayor stated that Mr. Formica had stated many times that this was not a brick storage area for warehousing and that he was a broker and this site would be used as transportation to the job site and the brick would stay for a short time until they were needed. The Mayor stated that the County assumes this site to be a brick warehouse and he wanted to be sure that the bricks that are store at Roxbury are not going to make their way here to Riverdale. The Mayor would like to know what Tri-State's role at this site is if any.

Chairman Loesner stated at this meeting we are only considering the health and safety of this site. The Mayor stated he is looking at the brick that were supposed to be for job sites and the bricks that are at the Roxbury site have been there for many years. Mr. Barbarula stated that these issues are being taken by the Surface Transportation Board, but as far as the meeting tonight, there were certain representations that did deal with health and safety and welfare done by Mr. Formica, and if these representations are going to be honored by the railroad as the operator of the business and those things that dealt with the comfort of our citizens were, certain representations that Mr. Formica's crew (now the railroad's crew) would work during general business hours only on six days a week, not seven and that the testimony would be on Saturday would be a minimal as needed loading day. The Mayor asked Mr. Fenno if Tri-State Brick is involved in this operation at all. Mr. Fenno stated that Tri-State is our customer, and the railroad will be operating this site. The Mayor stated that the trucks would come onto the site, the railroad would load the trucks with the brick and the trucks would drive off the site is that right. The Mayor stated that the railroad really has nothing to do with the operation. Mr. Fenno stated that the job sites would not be purchasing the bricks from the railroad, we will be transporting the brick. Mr. Fenno stated their intent is to normally operate as to unload and loading railcars and trucks. Mr. Fenno stated the intent or expectation is to operate the transloading portion of the facility which means unloading brick from rail cars and loading bricks onto trucks from 7:00 am to 4:00 p.m. Monday through Friday, with a potential for a morning on Saturday in the event that the trucks may needed to be loaded so they can leave early in the morning. The trucks will not be idling all night or all day and will be in compliance. Mr. Fenno stated those hours of operation are for the transloading, the train movement can happen any time day or night, any day of the week. Mr. Venza asked if the trains will be unloaded any time or during the normal business hours. Mr. Fenno stated only during business hours will the trucks be unloaded. The cars may be moved any time stated Mr. Fenno.

Mr. Barbarula stated that when the train cars are disconnected there is a sound made and he wanted to be sure everyone knew that. The cars that are disconnected any time of day or night will not be unloaded until the normal business hours the following day. The Mayor stated that the transloading operation, because of preemption, there is nothing we can do to stop them from unloading the bricks from the railcars to the site, is that correct? Mr. Barbarula stated yes, however; they did voluntarily agree to the modification. Mr. Barbarula stated that when we report back to Judge Bozonelis and he is aware of the voluntary agreement of the hours of operation by the railroad; this could be enforced. Once an agreement becomes part of this record it becomes enforceable.

Mr. Fenno stated that he would like to go on record to answer Mr. Darmofalski's comments that the railroad is in agreement to repair any damaged pavement or curbing, placing the signs for the restriction of the heights of the brick and replacing whatever landscaping has died and the recommendation of the extension of the wooden fence which Mr. Fenno stated he felt we would be talking about tonight. Chairman Loesner

stated we can talk about now. Mr. Fenno stated the stockade fence was built when the corn syrup was in place and the fence was placed wherever the property owners wanted it. Chairman Loesner stated he understands that the fence would go as far as it can, with the determination that the property owners could opt out. Vice-Chairman Magennis stated that the fencing would be for safety of the site as well. Chairman Loesner stated the board is probably better dealing with the residents. Mr. Barbarula stated the first time we did this, he recommended against it, because of the change in property owners and because the board should consider the fencing as safety and welfare and for that reason the board should make it's own decision rather than the property owners. Chairman Loesner asked Paul Darmofalski what his recommendation would be for the fence. Mr. Darmofalski stated that some of the people preferred landscaping, and maybe you should ask the property owners, however; his opinion is you have a different type of operation here and he would recommend the wooden fence for the safety of the site. Chairman Loesner stated he would ask the residents during the open portion of the hearing.

Mr. Fenno stated that expect to have two employees and they have added more parking due to the potential of having a customer park two trucks there overnight and the drivers may need a place to park, that is why the additional parking. Ms. Holmqvist stated she was not clear from the plans as to the pattern of the site. Mr. Meyers stated that the trucks would enter the site and loop around the existing building and then continue driving backwards to make the turn down into the facility to the point where those two tractors are shown on the plan. Ms. Holmqvist asked if the trucks would be driving in reverse that whole length. Mr. Meyers stated yes that is correct. The trucks make a turn where the pavement is the broadest width. Mr. Meyers stated when the trucks exit, they take a slight move to the right, over the existing scale and out the driveway. Ms. Holmqvist asked when they are in reverse do they the beepers and audible devices. Mr. Meyers stated yes. Ms. Holmqvist asked about the overlap of incoming and outgoing trucks and if it would be a problem due to there only being one driveway, which is 27' wide. Mr. Meyers stated he did not feel it would be a problem. Traffic will only be coming from one direction.

The Mayor asked how many feet the truck would be backing up. Mr. Darmofalski stated approximately 360'. Temporary storage is on the westerly side of the site and will only be used if the other storage is full stated Mr. Fenno. The Mayor asked how many bricks the temporary storage would hold. Mr. Fenno stated he didn't know. The Mayor asked how many bricks would be on a pallet. Mr. Darmofalski stated a cube would be approximately 200 bricks and he would try to calculate. Mr. Heimall asked if you could load a truck from both sides of the truck. Mr. Meyers stated the forklifts can reach both sides of the truck. Mr. Fenno stated usually there are two pallets high and he did not know how many pallets fit on a truck. The estimation would be four to six truck a day utilizing the site.

Mr. Darmofalski stated after calculating he came up with the temporary storage that is delineated on the plan is approximately 4800 square foot at a nine foot height would have the capability of 1600 cubes of brick to be store at 3 cubes high in the temporary storage area and bricks come in different sizes, but normal size bricks; there could be one million bricks in the temporary area.

Vice-Chairman Magennis stated he wanted to be sure different size bricks would not be stacked on each other due to the stability. Vice-Chairman Magennis asked about the loading of the trucks and that some of the trucks have their own boom that loads the brick, is it possible that the trucks would be loading on their own; therefore he would like to see the loading zones delineated. Mr. Fenno stated that would be fine. Vice-Chairman Magennis asked about the safety supervisor and his position and day to day responsibilities.

Mr. Heimall asked how many loaded railcars can fit on the site. Mr. Fenno stated there would be ten to twelve cars a week and seven can fit on the site. There are three sets of tracks that would accommodate removing a car from the train for unloading.

The Mayor asked how he would present letters that he received from the County in reference to the brick storage. Mr. Barbarula stated that in order to do that, the Mayor would have to leave the dais and be sworn in, and also would not be eligible to deliberate on this matter.

Glenn Venza asked about the railroad's property on the opposite side of the road from this site and it is a mess and would Mr. Fenno be open to cleaning that area. Mr. Fenno stated he would be open to having that area cleaned.

Chairman Steven Loesner opened the hearing to the public. Chairman Loesner stated that the public would be sworn in and therefore could present evidence or ask questions.

Mr. John Lucente, 3 Munn Avenue came forward and was sworn in. Mr. Lucente stated that his property abuts the railroad property. When the railroad initially improved their property many years ago, they laid a lot of macadam and the macadam that abutted the property line was given a slant towards our properties to have the runoff from the railroad come onto our properties. There are three properties that slant toward Post Lane. There was a heavy rain in the period and one of the properties had a pond and a half of water in their yard. They contacted Mr. Fiorilla and he reacted immediately by digging a 250' long three foot deep dry well that solved the problem. The first layers of the bricks would be on the tilt of that macadam and he feels that would be a problem for the safety. Mr. Darmofalski stated this is a legitimate concern because there is a slope and Mr. Lucente is correct. Mr. Fenno stated he wasn't sure what the question was. Mr. Darmofalski stated that the slope of the pavement would make the stacks of the brick tilt and it could be a problem. Mr. Meyers stated the answer would have to go back to the vendor or in this case Tri-State Brick. Chairman Loesner stated but this is a railroad operation not the brick company. Mr. Darmofalski stated this has to be addressed structurally. Chairman Loesner stated until that is remedied there should not be any brick stored in that area. Mr. Barbarula stated that is definitely a safety problem and that is a legitimate issue. Mr. Darmofalski reviewed where the drains on the site are located. Mr. Fenno asked where the location of the slope begins so he would be able to look at the location. Mr. Barbarula stated that until the slope is remedied there should be no more that one stack of brick on that location to avoid tipping. Chairman Loesner agreed.

Daniel Sciarra, 1 Munn Avenue came forward and was sworn in. Mr. Sciarra stated he wanted to go back to the original contract with the railroad and that it has never been appealed. One of the original complaints that he had made to the judge at that time was the diesel fuel fumes emitting on to our properties and we spent eighteen months trying to come up with a solution on how to keep the fumes from our properties. We came to the conclusion after eighteen months of hearings that they were going to use the air method to unload the trucks and they would not have the trucks running behind the homes. It seems to me that we have now got a worse problem. We are going to have the high-low's that do not have emission codes. These vehicles are going to be loading and unloading the trucks behind our properties and these fumes are a health concern for all the residents. The smoke and fumes will come onto our properties all day long. They will be running all day long every day. This is a health hazard. Mr. Sciarra stated he has lived here thirty-five years and the loading was a distance from the homes, now with this operation it is right in our yards, behind our homes. This is not healthy and you as board members have to defend us residents. This is very unhealthy situation, and I will be calling DEP again because of these fumes. These fumes are cancer causing fumes. The fence is porous and is not considered a barrier for smoke. The smell of diesel can get in your clothes. I would like to have the dock either moved away from our homes or enclosed. You say a building can't be placed over the water pipe, but you people are going to be stacking bricks over the pipe, isn't that worse? Mr. Sciarra asked who the first responder is case of emergency. There are a lot of considerations on this side of the site.

Mr. Fenno stated he had provided the board with the specifications for the forklifts that intend to use and they are rated for outdoor use and he stated you really don't hear or smell much of anything. These are significantly different than an eighteen wheeler truck. The highway diesel truck exhausts ten to twelve feet in the air. We have specifically

provided for the trucks to stay away from the residential area and that is why we have done that. Mr. Fenno stated the loading platform is located for the necessity of the railroad cars to be unloaded. This facility loading platform is set up so that two railroad cars can be spotted next to it without the other cars having to be moved. Relocating the loading platform would cut down on the efficiency of the site stated Mr. Fenno.

Daniel Sturm, 15 Munn Avenue, the Assistant Fire Chief of Riverdale came forward and was sworn in. Mr. Sturm asked if there would be fuel for these trucks stored on the site. Mr. Fenno stated that is a good question, and if they did have a need for that it would be a small storage tank located by the building in the beginning of the site. Mr. Sturm asked if there would be any offloading of bricks or cubes without the room for an emergency truck to be close to the site. Mr. Fenno stated there will be open spots for emergency vehicles. Mr. Sturm asked when your are not operating will the gates be secure and will there be access by Knox-Box or a security guard to the site. Mr. Fenno stated he would agree to the special locks for the emergency vehicles. Chairman Loesner stated any storage of fuel would be a concern.

William Allan, 1A Munn Avenue came forward and was sworn in. A few hearings ago no one knew the actual depth of that water pipe, so can't there be any test holes to find out how deep the pipe is. Mr. Darmofalski stated that we have documentation that the pipe is 5' deep and they have no problem with stacking the brick over the pipe up to nine feet high. Mr. Allan stated that Mr. Formica had stated it would take two minutes to move the brick in an emergency and everyone knows that is not true. Mr. Allan asked about the trucks overnight and if the trucks would be running all night to keep warm. Mr. Fenno stated there are two spots for that purpose and the laws do not allow idling.

Chairman Loesner asked for a motion to close the public portion of the hearing. Al Heimall set forth the motion seconded by Glenn Venza to close the public portion of the hearing.

**ALL IN FAVOR / Motion Carried**

Chairman Loesner asked if there is a summation. John Barbarula stated that this was a hearing to discuss the health and safety operations only. Mr. Fiorilla stated he feels they have reviewed their case and presented all of our plans and how we are going to proceed.

John Barbarula stated this application has been a continuation of previous hearings, the only modification to what had been provided is obviously that the railroad has taken the position that they are the operators of the site and that was at this proceeding and only this proceeding. We have accepted the testimony and the exhibit from our planner Donna Holmqvist and we have also accepted an additional exhibit which is 2B of 9 which is the circulation pattern. The applicant has agreed to the following:

1. They have adopted and presented to the board that in terms of the loading and unloading of the trucks with the material that they bring in from the rail operations, the bricks in this case, that that transloading (that wording is for the purpose of this hearing) is going to be conducted generally within the hours of 7:00 am to 4:00 pm Monday through Friday and that will occasionally go into a Saturday. They have indicated that they will voluntarily abide as part of this agreement which is part of the consent order, not to do the truck loading on Sundays.
2. They have also indicated that from time to time trucks may be loaded the night before and that those trucks will not be idling all night long but that at least they have made parking provisions for two trucks that may remain at this site overnight.
3. Additionally they have indicated that they would have two full-time employees during the hours of operation, one would be a supervisor and both would be capable of operating fork-lift trucks.
4. They have indicated that they would agree to provide the dispatch number for emergencies which is 24/7 for the NYSW railroad and also would give the information to the Borough for the supervisor contact number.

5. They have also indicated that they have no problem with complying with the request of the fire department to make sure there is access by knox-box locks.
6. They have agreed to the 9' high maximum stacking not only on top of the water line, but on the entire site.
7. They agreed that they would accept the recommendations of Mr. Darmofalski with the sign posting to clearly indicate the stacking cannot be more than 9' high maximum.
8. They have agreed that they will repair the driveway and the pavement. The macadam that needs to be repaired.
9. They agreed to fix and repair the existing fence and they agreed to extend the wood fencing to Post Lane unless the board decides they don't want to do that.
10. They have agreed to replace any dead landscaping that is indicated on the original plan which we have a fully certified copy as part of the exhibit.
11. They have indicated that they would accept the marking of the loading zone so that the trucks can come in to load will have clearly marked on the ground where they can go for loading.
12. Additionally to mark the areas of storage by paint on the macadam is also something they did not object to. There is an issue that has to be taken care of by physical inspection and that inspection was brought up by a member of the public and also addressed by our engineer. That issue which would require personal on site visit between our engineer and the applicant's engineer would be that there is a curbed area, sloping area of the existing macadam adjacent to the loading dock which is in the approximate area of Munn Avenue. That slope which is up to three degrees, according to our engineer, would have to be examined before and a solution to correct the problem. Until that solution is reached the stacking can not be more than one pallet high.
13. The applicant has further indicated that they will not do any storage behind the curb line which gives it in excess of almost 17' in most arrears so that there is no issue of a fall zone.
14. The applicant has indicated in reference to one of our board members questions, that to take care of the air pollution or irritant, that they would commit to using low sulphur fuel if the machinery can accommodate that.
15. Additionally they have also indicated to us that they may have to store fuel. The board should consider in their deliberations whether they want to make any conditions on that. The condition that is automatic, is that any storage of fuel has to be in compliance with the current fire regulations and that is necessary to say. If they are going to do that the board should be notified and the appropriate fire prevention steps should be taken and that the size should be recorded as well. Flammable fuel storage is something that is a potential hazard and the fire department has to know all of the information.
16. There will be no stacking of mismatched bricks.

Mr. Barbarula stated that the preamble of the resolution will read that we do not waive any of our rights to question nor to protest the preemption issue, nor does the applicant. Both parties agree that they are not conceding that there is an issue of preemption nor are we giving up our rights to seek preemption. I think that clearly that Judge Bozonelis direction to us is deal with the safety and leave the town who is the litigant in the Surface Transportation Board, deal with whether or not we are preempted or not preempted.

Chairman Loesner stated he wanted to make it clear to the public that any motion that was in favor of the resolution is purely in the amount of safety only and not in use.

Thereupon Vice-Chairman Brendan Magennis set forth the motion to approve the application under the conditions listed by John Barbarula and complying to the direction that was given to us by the court and based on the testimony from the applicant, and the

## **RIVERDALE PLANNING BOARD**

November 5, 2009

The Workshop/Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:** Present: Mayor William Budesheim  
Glenn Venza  
Al Heimall  
Vincent Pellegrini  
Bobby Roberts (Alt. No. 2)  
Vice-Chairman Brendan Magennis  
Chairman Steven Loesner

Absent: Councilman Joseph Falkoski  
Bradley Clinton  
George Lang  
Michael Reilly (Alt. No. 1)

Also present is John Barbarula Esquire, Board Attorney, Donna Holmqvist, Board Planner and Paul Darmofalski PE, Board Engineer.

### **APPROVAL OF MINUTES:**

Thereupon Vice-Chairman Brendan Magennis set forth the motion seconded by Al Heimall to approve the minutes of the October 22, 2009 meeting as written and submitted.

**ROLL CALL:** Ayes: Magennis, Heimall, Budesheim, Venza, Pellegrini,  
Roberts, Loesner  
Nays: None  
(7 Ayes – 0 Nays – Motion Carried)

### **WORKSHOP:**

Chairman Loesner asked if anyone was in the audience for the Workshop. No one came forward; thereupon Al Heimall set forth the motion seconded by Glenn Venza to close the workshop portion of the meeting.

**ALL IN FAVOR**

### **CONTINUATION OF HEARING FOR NYS&W RAILWAY:**

Mr. John Fiorilla, the attorney for the NYS&W RR came forward and his witnesses Mr. Nathan Fenno, President of the railroad and David A. Meyers the engineer who drew the plans submitted to the board. Mr. Fiorilla stated there are two plans submitted that are in compliance with the conditions listed on Mr. Darmofalski's letter and Ms. Holmqvist's letter, both dated November 2, 2009. The stand alone sheet No. 2 B of 9 is the only sheet that has been revised. Mr. Barbarula swore in Mr. Meyers and Mr. Fenno.

The stand alone sheet 2 B of 9 is marked Exhibit A - 11/5/2009. Mr. Meyers stated the sheet deals with a proposed traffic pattern for the facility and shows in schematic form the proposed hypothetical turning of the truck vehicles as they enter and exit the facility. The trucks enter off the Hamburg Turnpike, drive by the existing building and turn in to the paved area and at that point will stop, back up and be loaded where the signage states loading and parking. That is also proposed potential overnight parking. The forklift parking location is in the south end immediately adjacent to the unloading platform. The dumpster for the facility will also be tucked in the facility on the south end of the unloading facility. The entrance into the site on the existing pavement has a forty-five foot turning radius. Basically all of the traffic would be coming from the west off 287.

The only other addition or revision is the slight modification of the employee parking spaces. There are four on the north side of the building including one handicap spot, and we have moved two additional 10' x 20' employee parking spaces to the south side of the building that will right angle into the building. All of these are on existing asphalt pavement. We have addressed the comments referenced on Paul's letter.

The trucks are fifty-five footer tractor trailer trucks. They are regular tractor-trailer trucks. Mr. Meyers stated with this revised sheet, we have identified a location between the tracks for a proposed secondary temporary storage consisting of more than 4,700 feet of brick stack space. This is just behind the truck loading locations.

Mr. Venza asked if the forklifts will be in an enclosure or out in the elements. Mr. Meyers stated the forklifts will be kept outside. Mr. Meyers stated his forecast is for two forklifts and they will be diesel fuel. Chairman Loesner asked about the height of the light fixtures. Mr. Meyers stated they are proposing no changes to the lighting. The lights are in place and existing at 20' high for the former use.

Mr. Darmofalski stated there are a few areas of damaged pavement that have to be repaired, the second one is the stacks of brick are limited to 9' in height and there should be posting on the signage on the fence stating the height requirements for the forklift drivers so they clearly understand. The Mayor asked how many pallets 9' high would be. Mr. Darmofalski stated he thinks it would be three. The Mayor stated that the Planner has provided photos of the storage of the bricks at Roxbury and when you have three pallets or more it becomes unstable. The Mayor stated three pallets high can be unstable and for that reason he felt the maximum height should be two pallets high. The photos were not shown to the applicant. Ms. Holmqvist provided a copy of the photos to Mr. Fiorilla. The photos were marked Exhibit B 11/05/2009. Mr. Darmofalski stated he had two more points on his comments. Mr. Darmofalski stated there are portions of the fence that should be repaired and he is recommending the wooden fence also be extended to Post Lane. There was a barrier required ten years ago. Mr. Darmofalski stated he believed that Mr. Fenno had agreed to the fence at the last hearing and any landscaping that has died should be replaced.

Mr. Fenno stated that the photos shown are not pictures of their site. The site in Roxbury is of the brick storage and the M&E railroad, not NYSW. Mr. Fenno stated that it seems to be a brick storage site, but not theirs. The Mayor stated that Morris County told him that the bricks from that site are to be moved to Riverdale, and also Mr. Formica from Tri-State Brick stated at that time that these bricks were to be moved to the Riverdale site. The Mayor stated that was made quite clear during the testimony at the last hearing, so that is why we went to see what type of operation is there. The Mayor stated it doesn't matter what the railroad is, bricks are bricks and he would like to know what type of experience the railroad has with the brick company and storing these bricks.

Mr. Meyers stated that the photos appear to be stacked on an unstable base. Chairman Loesner asked if there will be a safety supervisor on site and if the town would know who the person is and who to contact. Mr. Fenno stated that the town would be notified of the person in charge of the safety operation. Mr. Fenno stated the bricks in the photos seem to be 9' high and haven't been moved in a year or more. Chairman Loesner stated unlike the Roxbury site, this site will be seen by the residents and everyone in the town that goes by the site. If we see stacks that are over 9' high that appear to be unstable, we are going to want to have someone we can contact immediately for a solution. Mr. Fenno stated that they have 24/7 coverage by dispatcher for any emergencies. Mr. Darmofalski stated that the fall zone for the bricks to the fence is approximately 17' from the stacked area to the fence. This would be outside the 9' fall. Mr. Fenno stated there is an existing asphalt curb on the site. Ms. Holmqvist stated that in order not to have a haphazard looking site, the board should consider having the RR mark out the yard where the stacks should be, to hinder a sloppy look. John Barbarula asked Ms. Holmqvist to please rise and be sworn in. After being sworn in, Ms. Holmqvist stated she that she saw the facility and had taken the photos. Ms. Holmqvist stated yes she had, and therefore; Mr. Barbarula asked that the photos be placed as Exhibit B 11/05/09, and that would be a board exhibit. Mr.

Fiorilla stated there was an error that notes that the title of the photos because they are not the property of NYSW railroad.

For the record stated Chairman Loesner these are photos of the brick storage area in Roxbury, NJ and the M&E railroad that are four pages in length. Mr. Fenno stated from the photos it appears that these would be the same bricks that would be on the Riverdale site.

The Mayor stated that he was confused by the fact that for months the Tri-State Brick company had representatives at the hearings for questions in reference to the brick and now they are not present and he would like to know why. The Mayor stated that Mr. Formica had stated many times that this was not a brick storage area for warehousing and that he was a broker and this site would be used as transportation to the job site and the brick would stay for a short time until they were needed. The Mayor stated that the County assumes this site to be a brick warehouse and he wanted to be sure that the bricks that are store at Roxbury are not going to make their way here to Riverdale. The Mayor would like to know what Tri-State's role at this site is if any.

Chairman Loesner stated at this meeting we are only considering the health and safety of this site. The Mayor stated he is looking at the brick that were supposed to be for job sites and the bricks that are at the Roxbury site have been there for many years. Mr. Barbarula stated that these issues are being taken by the Surface Transportation Board, but as far as the meeting tonight, there were certain representations that did deal with health and safety and welfare done by Mr. Formica, and if these representations are going to be honored by the railroad as the operator of the business and those things that dealt with the comfort of our citizens were, certain representations that Mr. Formica's crew (now the railroad's crew) would work during general business hours only on six days a week, not seven and that the testimony would be on Saturday would be a minimal as needed loading day. The Mayor asked Mr. Fenno if Tri-State Brick is involved in this operation at all. Mr. Fenno stated that Tri-State is our customer, and the railroad will be operating this site. The Mayor stated that the trucks would come onto the site, the railroad would load the trucks with the brick and the trucks would drive off the site is that right. The Mayor stated that the railroad really has nothing to do with the operation. Mr. Fenno stated that the job sites would not be purchasing the bricks from the railroad, we will be transporting the brick. Mr. Fenno stated their intent is to normally operate as to unload and loading railcars and trucks. Mr. Fenno stated the intent or expectation is to operate the transloading portion of the facility which means unloading brick from rail cars and loading bricks onto trucks from 7:00 am to 4:00 p.m. Monday through Friday, with a potential for a morning on Saturday in the event that the trucks may needed to be loaded so they can leave early in the morning. The trucks will not be idling all night or all day and will be in compliance. Mr. Fenno stated those hours of operation are for the transloading, the train movement can happen any time day or night, any day of the week. Mr. Venza asked if the trains will be unloaded any time or during the normal business hours. Mr. Fenno stated only during business hours will the trucks be unloaded. The cars may be moved any time stated Mr. Fenno.

Mr. Barbarula stated that when the train cars are disconnected there is a sound made and he wanted to be sure everyone knew that. The cars that are disconnected any time of day or night will not be unloaded until the normal business hours the following day. The Mayor stated that the transloading operation, because of preemption, there is nothing we can do to stop them from unloading the bricks from the railcars to the site, is that correct? Mr. Barbarula stated yes, however; they did voluntarily agree to the modification. Mr. Barbarula stated that when we report back to Judge Bozonelis and he is aware of the voluntary agreement of the hours of operation by the railroad; this could be enforced. Once an agreement becomes part of this record it becomes enforceable.

Mr. Fenno stated that he would like to go on record to answer Mr. Darmofalski's comments that the railroad is in agreement to repair any damaged pavement or curbing, placing the signs for the restriction of the heights of the brick and replacing whatever landscaping has died and the recommendation of the extension of the wooden fence which Mr. Fenno stated he felt we would be talking about tonight. Chairman Loesner



stated we can talk about now. Mr. Fenno stated the stockade fence was built when the corn syrup was in place and the fence was placed wherever the property owners wanted it. Chairman Loesner stated he understands that the fence would go as far as it can, with the determination that the property owners could opt out. Vice-Chairman Magennis stated that the fencing would be for safety of the site as well. Chairman Loesner stated the board is probably better dealing with the residents. Mr. Barbarula stated the first time we did this, he recommended against it, because of the change in property owners and because the board should consider the fencing as safety and welfare and for that reason the board should make it's own decision rather than the property owners. Chairman Loesner asked Paul Darmofalski what his recommendation would be for the fence. Mr. Darmofalski stated that some of the people preferred landscaping, and maybe you should ask the property owners, however; his opinion is you have a different type of operation here and he would recommend the wooden fence for the safety of the site. Chairman Loesner stated he would ask the residents during the open portion of the hearing.

Mr. Fenno stated that expect to have two employees and they have added more parking due to the potential of having a customer park two trucks there overnight and the drivers may need a place to park, that is why the additional parking. Ms. Holmqvist stated she was not clear from the plans as to the pattern of the site. Mr. Meyers stated that the trucks would enter the site and loop around the existing building and then continue driving backwards to make the turn down into the facility to the point where those two tractors are shown on the plan. Ms. Holmqvist asked if the trucks would be driving in reverse that whole length. Mr. Meyers stated yes that is correct. The trucks make a turn where the pavement is the broadest width. Mr. Meyers stated when the trucks exit, they take a slight move to the right, over the existing scale and out the driveway. Ms. Holmqvist asked when they are in reverse do they the beepers and audible devices. Mr. Meyers stated yes. Ms. Holmqvist asked about the overlap of incoming and outgoing trucks and if it would be a problem due to there only being one driveway, which is 27' wide. Mr. Meyers stated he did not feel it would be a problem. Traffic will only be coming from one direction.

The Mayor asked how many feet the truck would be backing up. Mr. Darmofalski stated approximately 360'. Temporary storage is on the westerly side of the site and will only be used if the other storage is full stated Mr. Fenno. The Mayor asked how many bricks the temporary storage would hold. Mr. Fenno stated he didn't know. The Mayor asked how many bricks would be on a pallet. Mr. Darmofalski stated a cube would be approximately 200 bricks and he would try to calculate. Mr. Heimall asked if you could load a truck from both sides of the truck. Mr. Meyers stated the forklifts can reach both sides of the truck. Mr. Fenno stated usually there are two pallets high and he did not know how many pallets fit on a truck. The estimation would be four to six truck a day utilizing the site.

Mr. Darmofalski stated after calculating he came up with the temporary storage that is delineated on the plan is approximately 4800 square foot at a nine foot height would have the capability of 1600 cubes of brick to be store at 3 cubes high in the temporary storage area and bricks come in different sizes, but normal size bricks; there could be one million bricks in the temporary area.

Vice-Chairman Magennis stated he wanted to be sure different size bricks would not be stacked on each other due to the stability. Vice-Chairman Magennis asked about the loading of the trucks and that some of the trucks have their own boom that loads the brick, is it possible that the trucks would be loading on their own; therefore he would like to see the loading zones delineated. Mr. Fenno stated that would be fine. Vice-Chairman Magennis asked about the safety supervisor and his position and day to day responsibilities.

Mr. Heimall asked how many loaded railcars can fit on the site. Mr. Fenno stated there would be ten to twelve cars a week and seven can fit on the site. There are three sets of tracks that would accommodate removing a car from the train for unloading.

The Mayor asked how he would present letters that he received from the County in reference to the brick storage. Mr. Barbarula stated that in order to do that, the Mayor would have to leave the dais and be sworn in, and also would not be eligible to deliberate on this matter.

Glenn Venza asked about the railroad's property on the opposite side of the road from this site and it is a mess and would Mr. Fenno be open to cleaning that area. Mr. Fenno stated he would be open to having that area cleaned.

Chairman Steven Loesner opened the hearing to the public. Chairman Loesner stated that the public would be sworn in and therefore could present evidence or ask questions.

Mr. John Lucente, 3 Munn Avenue came forward and was sworn in. Mr. Lucente stated that his property abuts the railroad property. When the railroad initially improved their property many years ago, they laid a lot of macadam and the macadam that abutted the property line was given a slant towards our properties to have the runoff from the railroad come onto our properties. There are three properties that slant toward Post Lane. There was a heavy rain in the period and one of the properties had a pond and a half of water in their yard. They contacted Mr. Fiorilla and he reacted immediately by digging a 250' long three foot deep dry well that solved the problem. The first layers of the bricks would be on the tilt of that macadam and he feels that would be a problem for the safety. Mr. Darmofalski stated this is a legitimate concern because there is a slope and Mr. Lucente is correct. Mr. Fenno stated he wasn't sure what the question was. Mr. Darmofalski stated that the slope of the pavement would make the stacks of the brick tilt and it could be a problem. Mr. Meyers stated the answer would have to go back to the vendor or in this case Tri-State Brick. Chairman Loesner stated but this is a railroad operation not the brick company. Mr. Darmofalski stated this has to be addressed structurally. Chairman Loesner stated until that is remedied there should not be any brick stored in that area. Mr. Barbarula stated that is definitely a safety problem and that is a legitimate issue. Mr. Darmofalski reviewed where the drains on the site are located. Mr. Fenno asked where the location of the slope begins so he would be able to look at the location. Mr. Barbarula stated that until the slope is remedied there should be no more that one stack of brick on that location to avoid tipping. Chairman Loesner agreed.

Daniel Sciarra, 1 Munn Avenue came forward and was sworn in. Mr. Sciarra stated he wanted to go back to the original contract with the railroad and that it has never been appealed. One of the original complaints that he had made to the judge at that time was the diesel fuel fumes emitting on to our properties and we spent eighteen months trying to come up with a solution on how to keep the fumes from our properties. We came to the conclusion after eighteen months of hearings that they were going to use the air method to unload the trucks and they would not have the trucks running behind the homes. It seems to me that we have now got a worse problem. We are going to have the high-low's that do not have emission codes. These vehicles are going to be loading and unloading the trucks behind our properties and these fumes are a health concern for all the residents. The smoke and fumes will come onto our properties all day long. They will be running all day long every day. This is a health hazard. Mr. Sciarra stated he has lived here thirty-five years and the loading was a distance from the homes, now with this operation it is right in our yards, behind our homes. This is not healthy and you as board members have to defend us residents. This is very unhealthy situation, and I will be calling DEP again because of these fumes. These fumes are cancer causing fumes. The fence is porous and is not considered a barrier for smoke. The smell of diesel can get in your clothes. I would like to have the dock either moved away from our homes or enclosed. You say a building can't be placed over the water pipe, but you people are going to be stacking bricks over the pipe, isn't that worse? Mr. Sciarra asked who the first responder is case of emergency. There are a lot of considerations on this side of the site.

Mr. Fenno stated he had provided the board with the specifications for the forklifts that intend to use and they are rated for outdoor use and he stated you really don't hear or smell much of anything. These are significantly different than an eighteen wheeler truck. The highway diesel truck exhausts ten to twelve feet in the air. We have specifically

provided for the trucks to stay away from the residential area and that is why we have done that. Mr. Fenno stated the loading platform is located for the necessity of the railroad cars to be unloaded. This facility loading platform is set up so that two railroad cars can be spotted next to it without the other cars having to be moved. Relocating the loading platform would cut down on the efficiency of the site stated Mr. Fenno.

Daniel Sturm, 15 Munn Avenue, the Assistant Fire Chief of Riverdale came forward and was sworn in. Mr. Sturm asked if there would be fuel for these trucks stored on the site. Mr. Fenno stated that is a good question, and if they did have a need for that it would be a small storage tank located by the building in the beginning of the site. Mr. Sturm asked if there would be any offloading of bricks or cubes without the room for an emergency truck to be close to the site. Mr. Fenno stated there will be open spots for emergency vehicles. Mr. Sturm asked when your are not operating will the gates be secure and will there be access by Knox-Box or a security guard to the site. Mr. Fenno stated he would agree to the special locks for the emergency vehicles. Chairman Loesner stated any storage of fuel would be a concern.

William Allan, 1A Munn Avenue came forward and was sworn in. A few hearings ago no one knew the actual depth of that water pipe, so can't there be any test holes to find out how deep the pipe is. Mr. Darmofalski stated that we have documentation that the pipe is 5' deep and they have no problem with stacking the brick over the pipe up to nine feet high. Mr. Allan stated that Mr. Formica had stated it would take two minutes to move the brick in an emergency and everyone knows that is not true. Mr. Allan asked about the trucks overnight and if the trucks would be running all night to keep warm. Mr. Fenno stated there are two spots for that purpose and the laws do not allow idling.

Chairman Loesner asked for a motion to close the public portion of the hearing. Al Heimall set forth the motion seconded by Glenn Venza to close the public portion of the hearing.

**ALL IN FAVOR / Motion Carried**

Chairman Loesner asked if there is a summation. John Barbarula stated that this was a hearing to discuss the health and safety operations only. Mr. Fiorilla stated he feels they have reviewed their case and presented all of our plans and how we are going to proceed.

John Barbarula stated this application has been a continuation of previous hearings, the only modification to what had been provided is obviously that the railroad has taken the position that they are the operators of the site and that was at this proceeding and only this proceeding. We have accepted the testimony and the exhibit from our planner Donna Holmqvist and we have also accepted an additional exhibit which is 2B of 9 which is the circulation pattern. The applicant has agreed to the following:

1. They have adopted and presented to the board that in terms of the loading and unloading of the trucks with the material that they bring in from the rail operations, the bricks in this case, that that transloading (that wording is for the purpose of this hearing) is going to be conducted generally within the hours of 7:00 am to 4:00 pm Monday through Friday and that will occasionally go into a Saturday. They have indicated that they will voluntarily abide as part of this agreement which is part of the consent order, not to do the truck loading on Sundays.
2. They have also indicated that from time to time trucks may be loaded the night before and that those trucks will not be idling all night long but that at least they have made parking provisions for two trucks that may remain at this site overnight.
3. Additionally they have indicated that they would have two full-time employees during the hours of operation, one would be a supervisor and both would be capable of operating fork-lift trucks.
4. They have indicated that they would agree to provide the dispatch number for emergencies which is 24/7 for the NYSW railroad and also would give the information to the Borough for the supervisor contact number.

5. They have also indicated that they have no problem with complying with the request of the fire department to make sure there is access by knox-box locks.
6. They have agreed to the 9' high maximum stacking not only on top of the water line, but on the entire site.
7. They agreed that they would accept the recommendations of Mr. Darmofalski with the sign posting to clearly indicate the stacking cannot be more than 9' high maximum.
8. They have agreed that they will repair the driveway and the pavement. The macadam that needs to be repaired.
9. They agreed to fix and repair the existing fence and they agreed to extend the wood fencing to Post Lane unless the board decides they don't want to do that.
10. They have agreed to replace any dead landscaping that is indicated on the original plan which we have a fully certified copy as part of the exhibit.
11. They have indicated that they would accept the marking of the loading zone so that the trucks can come in to load will have clearly marked on the ground where they can go for loading.
12. Additionally to mark the areas of storage by paint on the macadam is also something they did not object to. There is an issue that has to be taken care of by physical inspection and that inspection was brought up by a member of the public and also addressed by our engineer. That issue which would require personal on site visit between our engineer and the applicant's engineer would be that there is a curbed area, sloping area of the existing macadam adjacent to the loading dock which is in the approximate area of Munn Avenue. That slope which is up to three degrees, according to our engineer, would have to be examined before and a solution to correct the problem. Until that solution is reached the stacking can not be more than one pallet high.
13. The applicant has further indicated that they will not do any storage behind the curb line which gives it in excess of almost 17' in most arrears so that there is no issue of a fall zone.
14. The applicant has indicated in reference to one of our board members questions, that to take care of the air pollution or irritant, that they would commit to using low sulphur fuel if the machinery can accommodate that.
15. Additionally they have also indicated to us that they may have to store fuel. The board should consider in their deliberations whether they want to make any conditions on that. The condition that is automatic, is that any storage of fuel has to be in compliance with the current fire regulations and that is necessary to say. If they are going to do that the board should be notified and the appropriate fire prevention steps should be taken and that the size should be recorded as well. Flammable fuel storage is something that is a potential hazard and the fire department has to know all of the information.
16. There will be no stacking of mismatched bricks.

Mr. Barbarula stated that the preamble of the resolution will read that we do not waive any of our rights to question nor to protest the preemption issue, nor does the applicant. Both parties agree that they are not conceding that there is an issue of preemption nor are we giving up our rights to seek preemption. I think that clearly that Judge Bozonelis direction to us is deal with the safety and leave the town who is the litigant in the Surface Transportation Board, deal with whether or not we are preempted or not preempted.

Chairman Loesner stated he wanted to make it clear to the public that any motion that was in favor of the resolution is purely in the amount of safety only and not in use.

Thereupon Vice-Chairman Brendan Magennis set forth the motion to approve the application under the conditions listed by John Barbarula and complying to the direction that was given to us by the court and based on the testimony from the applicant, and the

witness and the public and the board, he felt it was appropriate to make this motion to approve. The motion was seconded by Al Heimall.

Mr. Barbarula stated the motion is to approve the utilization under the consent order with these safety concerns addressed.

**ROLL CALL:**

Ayes: Magennis, yes / with the conditions set forth as per the motion.

Heimall, yes / as stated with the conditions

Budesheim, / no / This is a land use board and I

know very clearly what the directions from the Judge are, but the land use law's purpose is to deal with the health, safety and welfare of the public. Though this entire thing, the use, the utilization, whatever you want to call it, comes under our jurisdiction because that is our responsibility. And the reason why we have zones is because some uses are not compatible with others for health, safety and general welfare of the people. And I find this use extremely offensive and insulting to this community and to the neighborhood. And I look at some of these conditions; first of all I don't think Hamburg Turnpike could safely handle any more truck traffic. The testimony is sketchy, it's almost amateurish because they have no experience and they haven't been able to give us clear answers. And if you look at that truck turn into that site, I don't know if you have ever seen an eighteen wheeler trying to make a right hand turn, well they go left first before they can go right and those trucks are going to be going into the oncoming traffic. There is no way they are going to be able to make that ninety degree turn without doing that. We have problems there. I see it all the time on the Hamburg Turnpike. We have the issue of diesel fumes in this neighborhood, as testified to by a resident who has experience with this. You will have many trucks coming here and you will have forklifts running how long because the applicant does not have the answer to that. These bricks are being stored on top of a 108" aqueduct, and I think that is a legitimate concern. Nothing has happened in the twenty-five years that it has been there, but we have had house fires here in town, those houses have never been on fire before either, but things do happen, and it is our responsibility to make sure that we can reasonably protect the neighborhood. As far as the type of fuel that they use, it sounds good on paper, totally unenforceable. Is the zoning officer is going to go out there and oversee the fuel delivery. The applicant doesn't even know how they are going to provide fuel when asked by the residents. How are they going to get the source of fuel, they don't even know that. We have their engineer who tipped their hand that Tri-State Brick is very much involved in this. The information I received from the County that the operation in Roxbury is not a transloading operation; it is a brick storage operation, because they said if it is a transloading operation that is the only thing that is allowed at that site. It is the exact same operation; it is not considered transloading, but brick storage. And it is not as if we are against this type of use in our town, we just feel that we have zones and there are appropriate places to carry on certain activities, and in order to protect the health, safety and welfare of our residents, and so I don't feel that this utilization of this site for health, safety and welfare reasons is appropriate. That is why I am voting no.

Venza: yes / (no comments)

Pellegrini : no / for the concerns of the residents that are here, for the health and welfare, I vote no.

Roberts: no / because of the health and welfare of the residents and I don't feel that the testimony that we have heard was complete and honest.

Loesner: no / I don't like having a gun put to my head by the court on this, but I agree with the Mayor. I find the use itself in this location unsafe for the residents. I vote no.

(3 Ayes – 4 Nays – Motion Denied)

**THE CHAIR TAKES A FIVE-MINUTE RECESS.**

**PLANNING BOARD MEETING RESUMES AT 9:33 P.M.**

**APPROVAL OF BILLS:**

Chairman Loesner stated that there are two bills for RER, one for \$460.00 and one for \$230.00 for Paul Darmofalski Engineering Associates, Inc. that were not enter on the agenda.

Thereupon Al Heimall set forth the motion seconded by Glenn Venza to approve payment of the two bills totaling \$690.00.

**ROLL CALL:**                   Ayes: Heimall, Venza, Budesheim, Pellegrini, Roberts,  
  Magennis, Loesner  
  Nays: None  
  (7 Ayes – 0 Nays – Motion Carried)

**CANCELLATION OF NOVEMBER 12, 2009 MEETING:**

Due to lack of agenda Chairman Steven Loesner set forth the motion to cancel the November 12, 2009 meeting making the next meeting December 3, 2009, seconded by Al Heimall.

**ALL IN FAVOR / Motion Carried**

**EXECUTIVE SESSION:**

Thereupon Al Heimall set forth the motion seconded by Glenn Venza to go into Executive Session to discuss legal matters at 9:40 p.m.

**ALL IN FAVOR / Motion Carried**

Thereupon Chairman Steven Loesner set forth the motion seconded by Glenn Venza to leave the Executive Session at 9:51p.m.

**ALL IN FAVOR / Motion Carried**

**ADJOURNMENT:**

Thereupon Chairman Steven Loesner set forth the motion seconded by Al Heimall to adjourn the meeting.

Meeting adjourned at 9:52 p.m.

Respectfully submitted by:

\_\_\_\_\_  
Linda Roetman, Board Secretary

**RIVERDALE PLANNING BOARD**  
**December 3, 2009**

The Workshop/Regular meeting of the Riverdale Planning Board opened on the above date at 7:30 p.m. Chairman Steven Loesner read the sunshine law.

**ROLL CALL:**      Present:      Mayor William Budesheim  
   Councilman Joseph Falkoski  
   Glenn Venza  
   Al Heimall  
   Bradley Clinton  
   George Lang  
   Vincent Pellegrini  
   Michael Reilly (Alt. No. 1)  
   Bobby Roberts (Alt. No. 2)  
   Chairman Steven Loesner

                         Absent:      Vice-Chairman Brendan Magennis

Also present is John Barbarula Esquire, Board Attorney.

**WORKSHOP:**

Chairman Loesner asked if anyone had presentation for the workshop portion of the meeting. No one came forward; thereupon Chairman Loesner set forth the motion seconded by Glenn Venza to close the Workshop portion of the meeting.  
**ALL IN FAVOR / Motion Carried**

**APPROVAL OF MINUTES:**

Thereupon Al Heimall set forth the motion seconded by Glenn Venza to approve the minutes of November 5, 2009 as written and submitted.

**ROLL CALL:**      Ayes: Heimall, Venza, Budesheim, Pellegrini, Roberts,  
   Loesner  
                         Nays: None  
                         Abstain: Falkoski, Clinton, Lang, Reilly  
                         (6 Ayes – 0 Nays – 4 Abstain – Motion Carried)

**APPROVAL OF BILLS:**

There is one bill for Paul Darmofalski Engineering Associates, Inc. in the amount of \$230.00 for RER.

Thereupon George Lang set forth the motion seconded by Al Heimall to approve payment of one bill totaling \$230.00 for Darmofalski Engineering Associates, Inc.

**ROLL CALL:**      Ayes: Lang, Heimall, Budesheim, Falkoski, Venza, Pellegrini,  
   Clinton, Reilly, Roberts, Loesner  
                         Nays: None  
                         (10 Ayes – 0 Nays – Motion Carried)

**RESOLUTION:**

1. Resolution for NYS&W Railway / Paterson Hamburg Turnpike and Post Lane / Block 17 Lot 4 / Zone Community Redevelopment District

The Resolution was submitted to the board members prior to the meeting for review. Thereupon Chairman Steven Loesner set forth the motion seconded by Vincent Pellegrini to approve the Resolution as written and submitted.

**ROLL CALL:** Ayes: Loesner, Pellegrini, Budesheim, Roberts  
Nays: None  
Abstain: Falkoski, Venza, Heimall, Clinton, Lang  
(4 Ayes – 0 Nays – 5 Abstain – Motion Carried)

**OTHER BUSINESS:**

**1. Meeting for December 10, 2009**

Chairman Loesner stated there is no agenda for the December 10, 2009, thereupon Chairman Loesner set forth a motion seconded by Vincent Pellegrini to cancel the December 10, 2009 meeting.

**ALL IN FAVOR / Motion Carried**

**2. Date for the Reorganization Meeting**

Thereupon Chairman Steven Loesner set forth the motion seconded by Vincent Pellegrini to set January 7, 2009 as the Reorganization Meeting Date at 7:30 p.m.

**ROLL CALL:** Ayes: Loesner, Pellegrini, Budesheim, Falkoski, Venza,  
Heimall, Clinton, Lang, Reilly  
Nays: None  
(9 Ayes – 0 Nays – Motion Carried)

**3. Reorganization Meeting**

Chairman Loesner stated that the secretary informed him that we have an application that will be heard the night of the reorganization meeting. The board must be represented by an attorney for that evening. Normally an attorney is chosen at the reorganization date, however; in this case an attorney would not have time to review the contents of the case, therefore; Chairman Loesner set forth the motion to have John Barbarula extend his contract with the board to cover that application. The motion was seconded by Al Heimall.

**ROLL CALL:** Ayes: Loesner, Heimall, Budesheim, Falkoski, Venza,  
Pellegrini, Clinton, Lang, Reilly  
Nays: None  
(9 Ayes – 0 Nays – Motion Carried)

**ADJOURNMENT:**

Thereupon Chairman Loesner set forth the motion seconded by Vincent Pellegrini to adjourn the meeting.

Meeting adjourned at 7:52 p.m.

Respectfully submitted by:

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Linda Roetman  
Board Secretary